



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1994

Honorable Rayford A. Ratliff
Moore County Attorney
715 Dumas Avenue
Courthouse, Room #208
Dumas, Texas 79029

Letter Opinion No. 94-090

Re: Whether Moore County Development, Inc., is subject to the Open Meetings Act, Government Code chapter 551 (ID# 26338)

Dear Mr. Ratliff:

You ask whether Moore County Development, Inc. ("MCD"), is subject to the Open Meetings Act, Gov't Code ch. 551. You have provided us with the Articles of Incorporation of MCD and the Secretary of State's Certificate of Incorporation certifying that the MCD was incorporated on August 21, 1975, pursuant to the provisions of the Texas Non-Profit Corporation Act, V.T.C.S. arts. 1396-1.01 to 10.07. The Articles of Incorporation state that the corporation was organized for the following purposes:

To apply for, receive and administer governmental grants, loans and other governmental assistance programs and for the administration of and the redistribution to public or private entities of grants, loans, loan guarantees or other appropriate assistance under . . . Title IX of the Public Works and Economic Development Act of 1965 . . . ;¹ specifically to receive from the City of Cactus, Texas and to administer, utilize, retain, invest, disburse and reutilize funds under that EDA Grant No. 08-19-011671 and in accordance with the terms and provisions and objectives of the grant agreement associated therewith; and . . . to promote the business interest of the Moore County area and vicinity, including rendering financial and other assistance to the manufacturing, industrial, business and trade development of Moore County and vicinity

Articles of Incorporation of Moore County Development, Inc., Art. IV (footnote added).

The grant funds under EDA Grant No. 08-19-01671 were designated "for use in a manner consistent with the requirements and purposes of Title IX of the Public Works and Economic Development Act of 1965, as amended." *Id.* The Articles of Incorporation provide for a seven-member board of directors. The cities of Dumas, Cactus, and Sunray appoint one director each; the governing board of "100 D.I.D., Inc., a Texas

¹42 U.S.C. §§ 3121 - 3266.

corporation,” appoints one director; and the governing boards of three local banks appoint one director each. *Id.* Art. IX.

In Attorney General Opinion JM-596 (1986), this office considered whether nonprofit water supply corporations were governmental bodies subject to the Open Meetings Act. These corporations did not have the powers or the structure of “governmental bodies” subject to the Open Meetings Act. Certain provisions of the Water Code required nonprofit water supply corporations subject to them to comply with the Open Meetings Act, but the Open Meetings Act did not by its own terms apply to nonprofit water supply corporations. Attorney General Opinion JM-596, at 4; *see also* Attorney General Opinion DM-7 (1991) (nonprofit corporation that provides services to the elderly is not subject to Open Meetings Act).

The Open Meetings Act applies to “governmental bodies,” defined to mean:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law; and

(I) a nonprofit corporation organized under . . . [V.T.C.S.] Article 1434a . . . that provides a water supply or wastewater service, or both

Gov’t Code § 551.001(3).²

²The definition of “governmental body” in the Open Records Act and the Open Meetings Act are very similar, with one important addition in the Open Records Act. The Open Records Act, unlike the Open Meetings Act, defines “governmental body” to include “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.” Gov’t Code § 552.003(a)(10). We have not been asked, and we do not determine, whether Moore County Development, Inc. is subject to the Open Records Act.

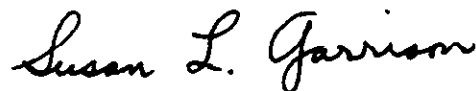
The MCD does not exercise governmental powers. See Attorney General Opinion JM-794 (1987). The source of its authority is the Texas Non-Profit Corporation Act, the applicable federal law and regulations, and the requirements of the grant agreement. It is not an entity "within the executive or legislative branch of state government." See Attorney General Opinions DM-7 (1991); JM-1185 (1990); JM-596 (1986); JM-340 (1985). It is not a governing body identified by subsection (B), (C), (E) through (G), or (I) of section 551.001(3) of the Government Code, nor is it "a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality" within subsection (D) of section 551.001(3). See Attorney General Opinion DM-7. Finally, it is not "a special district created by law" within subsection (H) of section 551.001(3). The MCD was organized by incorporators pursuant to the Texas Non-Profit Corporation Act, not "created by law." *Id.* at 3. See BLACK'S LAW DICTIONARY 1253 (5th ed. 1986), *quoted in Sierra Club v. Austin Transp. Study Policy Advisory Comm.*, 746 S.W.2d 298 (Tex. App.--Austin 1988, writ denied) (defining "special district"). Thus, the MCD is not a governmental body within the Open Meetings Act.

We do not know of any other law that requires the MCD to comply with the requirements of the Open Meetings Act. The Development Corporation Act of 1979, V.T.C.S. art. 5190.6, requires the board of directors of an industrial development corporation created pursuant to that statute to comply with the Open Meetings Act. V.T.C.S. art. 5190.6, § 11(b); see Attorney General Opinion JM-120 (1983). The MCD, however, was created pursuant to the Texas Non-Profit Corporation Act, Acts 1959, 56th Leg., ch. 162, prior to the time article 5190.6, V.T.C.S. was enacted, see Acts 1979, 66th Leg., ch. 700, at 1675. In conclusion, the MCD is not subject to the Open Meetings Act.

S U M M A R Y

The Moore County Development, Inc., a nonprofit corporation that uses federal grant funds to carry out the purposes of Title IX of the Public Works and Economic Development Act of 1965, is not subject to the Open Meetings Act.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee